

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GIG HARBOR MARINA, INC.;
STANLEY STEARNS and JUDITH
STEARNS, husband and wife,

Plaintiffs,

v.

CITY OF GIG HARBOR, a Washington
municipal corporation,

Defendant.

CASE NO. C09-5726BHS

ORDER GRANTING
PLAINTIFFS' UNOPPOSED
MOTION FOR VOLUNTARY
DISMISSAL OF FEDERAL
CLAIMS AND REMANDING
REMAINING CLAIMS TO
STATE COURT

This matter comes before the Court on Plaintiffs' motion for voluntary dismissal of their federal claims pursuant to Fed. R. Civ. P. 41(a) and their motion for remand to state court for the remaining claims (Dkt. 8). The Court has considered the pleadings filed in regard to the motion and the remainder of the file and hereby dismisses the federal claims and remands the remaining claims to state court as discussed herein.

On November 23, 2009, Defendant removed this matter to federal district court. Dkt. 2. On March 25, 2010, Plaintiffs filed the instant motion. Dkt. 8. On April 12, 2010, Defendant responded. Dkt. 11. On April 16, 2010, Plaintiffs replied. Dkt. 12.


1 Plaintiffs move the Court, pursuant to Fed. R. Civ. P. 41(a), to grant the voluntary
2 dismissal of their federal claims and to remand their remaining state law claims to state
3 court. Dkt. 8. Defendant does not oppose this motion. Dkt. 11. However, Defendant
4 requests that the dismissal be with prejudice and that Defendant be awarded attorney fees
5 and costs related to the instant motion. *Id.* Because the parties agree that the federal
6 claims should be dismissed, the Court grants Plaintiffs' motion to dismiss those claims.

7 Whether a motion for voluntary dismissal should be with or without prejudice is a
8 matter committed to the Court's discretion. Fed. R. Civ. P. 41(a)(2). This case is yet in its
9 early stages and no discovery has occurred. The City of Gig Harbor has failed to show
10 that it will be unfairly prejudiced by an order of dismissal without prejudice or that the
11 work performed by its attorneys cannot be useful in any future litigation. Therefore, the
12 Court dismisses the federal claims without prejudice and declines Defendant's request for
13 attorney fees and other costs.

14 Finally, the Court remands the remaining claims to state court. *See* 28 U.S.C. §
15 1367(c)(3) (retaining supplemental jurisdiction over remaining state law claims is
16 discretionary).

17 Therefore, it is hereby **ORDERED** that Plaintiffs' motion to dismiss and remand
18 (Dkt. 8) is **GRANTED** as discussed herein. The Court **DENIES** Defendant's request for
19 attorney fees and costs.

20 DATED this 10th day of May, 2010.

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23 BENJAMIN H. SETTLE
24 United States District Judge
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